

Drafted by:
Todd Meierhenry
Danforth & Meierhenry, LLP
317 S. Phillips Avenue
Sioux Falls, SD 57104
(605) 336-3075

FIRST AMENDMENT TO LEASE-PURCHASE AGREEMENT

between

FIRST BANK & TRUST, as Trustee
Lessor

and

BROOKINGS COUNTY, SOUTH DAKOTA

as Lessee

Dated as of the 1st day of November 2020

THIS FIRST ADMENDMENT TO LEASE-PURCHASE AGREEMENT dated as of November 1, 2020, (the “ Lease”), by and between FIRST BANK & TRUST, as trustee, a bank duly organized and existing under the laws of the South Dakota, as lessor (Trustee) and BROOKINGS COUNTY, SOUTH DAKOTA, a political subdivision of the State of South Dakota (the County), as lessee amends the Lease-Purchase Agreement dated July 18, 2012 between the parties;

WITNESSETH:

WHEREAS, the County is authorized by law to acquire such items of real and personal property as are needed to carry out its governmental and proprietary functions, and to acquire such real and personal property by entering into lease contracts; and

WHEREAS, the County has determined that it is necessary for it to acquire pursuant to this Lease certain interests in real property described on Exhibit A hereto (the “Land”), together with certain buildings, structures and improvements to be renovated, constructed and equipped thereon (the “Facilities”); and

WHEREAS, the Trustee is willing to acquire a leasehold interest in the Land and title to the Facilities and to lease and with the option to sell the same to the County, pursuant to this Lease.

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. For the purposes of this Lease and Exhibits attached hereto, the terms defined in the Trust Agreement and capitalized herein shall have the meaning ascribed to them in the Trust Agreement, unless the context requires some other meaning. In addition, the terms defined in this Section shall, for all purposes of this Lease and Exhibits attached hereto, have the meanings herein specified.

“2020 Certificates” means the Certificates of Participation, Series 2020 evidencing proportionate interest of the owners in a lease-purchase agreement prepared and delivered by the Trustee pursuant to the Trust Agreement.

“2012 Certificates” means the Certificates of Participation, Series 2012 evidencing proportionate interest of the owners in a lease-purchase agreement prepared and delivered by the Trustee pursuant to the Trust Agreement

“Act of Bankruptcy” means mean any of the following events:

- (i) The County shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the County or of all or a substantial part of either of their property, (b) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, or
- (ii) A proceeding or case shall be commenced, without the application or consent of the County, as the case may be, in any court of competent jurisdiction, seeking

(a) the liquidation, reorganization, dissolution, winding-up, or the composition or adjustment of debts of the County (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the County or of all or any substantial part of the assets of the County, or (c) similar relief in respect of the County under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case has not been dismissed within sixty (60) days of the filing thereof.

“Authorized Officer” means when used with respect to the County, the Chairman, Finance Officer or any other person who is designated in writing by the Finance Officer as an Authorized Officer for purposes of this Lease.

“Authorized Officer” means when used with respect to the Trustee, any Vice President or Trust Officer of the Trustee.

“Bond Counsel” means an attorney or law firm having a national reputation as bond counsel in connection with the issuance of state and local government obligations.

“Business Day” means any day upon which banks located in the State are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Certificates” means the 2012 Certificates and the 2020 Certificates.

“Chairman” means the Chairman of the County Commission.

“County” means the Brookings County, South Dakota.

“County Commission” means the governing body of the County.

“Closing Date” means the date upon which the Certificates are delivered to the Original Purchaser against payment therefore.

“Code” means the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code are to sections thereof as they exist on the date of execution of this instrument, but include any amendment of the provisions thereof.

“Completion Date” means the date of completion of construction of the Facilities, established in accordance with Section 3.2(e) hereof.

“Construction Costs” means all costs of payment of, or reimbursement for, acquisition, construction, installation and financing of the Facilities, including but not limited to, administrative costs, engineering costs, costs of feasibility, environmental and other reports, inspections costs, permits fees filing and recording costs, costs of obtaining title insurance or title opinion, printing costs, reproduction and binding costs, legal fees and charges, professional consultation fees, and charges and fees in connection with the foregoing.

“Facilities” means the County Courthouse.

“Fiscal Year” the twelve month fiscal period of the County, which commences on January 1 in every year and ends on December 31 of that year.

“Ground Lease” means the First Supplemental Ground Lease Agreement, dated as of November 1, 2020, by which the County leases the Land to the Trustee.

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the State of South Dakota who is not a full time employee of the Trustee or the County.

“Interest” means the portion of any Lease Payment designated as and comprising interest as described in the attached Exhibit B.

“Interest Payment Date” means any of the dates for scheduled payments of Interest, as shown on Exhibit B.

“Land” means the real property described on Exhibit A hereto including any property added to or substituted for any portion of the Land and less any real property released from the Lease and the lien for the Trust Agreement, all pursuant to Article V of the Lease.

“Lease Payment” the payment due from the County to the Trustee on each Payment Date during the Term of this Lease, as shown on Exhibit B.

“Lease Term” or “Term of this Lease” means the term starting July 18, 2012 and ending on December 1, 2037.

“Net Proceeds” means any insurance proceeds paid with respect to the Facilities, remaining after payment therefrom of all expenses incurred in the collection thereof.

“Payment Date” means each May 15 and November 15 upon which any Lease Payment is due and payable as provided in Exhibit B.

“Permitted Encumbrances” means as of any particular time: (i) liens for taxes and assessments not then delinquent, or which the County may, pursuant to provisions of Section 5.3 hereof, permit to remain unpaid, (ii) the Ground Lease, this Agreement and amendments hereto or thereto, (iii) the Trustee’s interest in the Facilities, (iv) any mechanic’s, laborer’s, materialmen’s, supplier’s or vendor’s lien or right not filed or perfected in the manner prescribed by law, other than any lien which the County may, pursuant to Section 5.2 hereof, permit to remain unpaid; and (v) encumbrances disclosed on Exhibit A hereto.

“Preliminary Expenditures” means Cost of Issuance or Construction Costs which (i) were incurred prior to May 19, 2012, (ii) do not, in the aggregate, exceed 20% of the Issue Price of the Certificates and (iii) if Construction Costs, are of the following types: architectural.,

engineering, soil testing, surveying and similar costs incident to commencement of construction.

“Principal” means the portion of any Lease Payment designated as principal in the attached Exhibit B.

“Principal Balance” means the sum of all unpaid principal components on Schedule B.

“Principal Component” means that portion of the Lease Payments designated as principal on Schedule B.

“Principal Office” means with regard to the Trustee, First Bank & Trust, 520 6th Street, PO Box 5057, Brookings, South Dakota 57006-5057.

“Principal Payment Date” means any of the dates for scheduled payments of Principal, as shown on Exhibit B.

“Purchase Price” means the sum of the Principal Balance plus unpaid interest, interest to be calculated on the basis of 12/30 day months.

“Resolution” means the resolution of the governing body of the County adopted May 31, 2012, as they may be amended from time to time.

“State” means the State of South Dakota.

“State and Federal Laws” means the Constitution and any law of the State and any rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

“Tax Exemption Certificate and Agreement” means the Tax Exemption Certificate and Agreement described in Section 5.6 hereof, to be executed and delivered by the County on the Closing Date.

“Trust Agreement” means the Declaration of Trust, of even date herewith, by the Trustee, and joined in by the County and any amendment thereof or supplement thereto.

“Trust Fund” means the trust fund created in Section 4.01 of the Trust Agreement.

“Trustee” means First Bank & Trust, Brookings, South Dakota, and its successors and assigns, in its capacity as trustee under the Trust Agreement.

“Trustee Prime Rate” means the rate of interest publicly announced by the Trustee from time to time as its prime rate.

Section 1.2. Exhibits

The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A legal description of the Land and a description of Facilities being leased by the County pursuant to this Lease, and a listing of Permitted Encumbrances.

Exhibit B: Shows the date and Interest and Principal amount and Purchase Price of each Lease Payment coming due during the Lease Term, and the provisions for prepayment of the Lease Payments.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations Covenants and Warranties of the County. The County represents, covenants and warrants as follows:

- (a) The County is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (b) This Lease is entered into under authority of and pursuant to South Dakota Codified Laws Chapter 7-25, as amended.
- (c) The officers of the County executing this Lease have been duly authorized to do so.
- (d) The Facilities will be used during the Term of the Lease primarily to carry out the governmental or proprietary purposes of the County and its departments, agencies, institutions, instrumentalities and political subdivisions.
- (e) The County has levied an amount sufficient to pay all Lease Payments and other obligations of the County under this Lease, and will take all other actions necessary to spread such levies and provide moneys for the payment of the obligations of the County under this Lease from sources of the County lawfully available for this purpose.
- (f) This Lease is designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b) (3) of the Code. The County will not designate, or request any other governmental entity to designate on its behalf, more than \$10,000,000 of its obligations as "qualified tax-exempt obligations" in calendar year 2020. The County does not reasonably expect to issue, and will not request any other governmental entity to issue on its behalf, in calendar year 2020, more than \$10,000,000 of obligations which it or such entity could designate as "qualified tax-exempt obligations."
- (g) The County will file with the Internal Revenue Service the information reporting statement required by Section 149(e) of the Code.
- (h) The County agrees that it will not take any action which would have the effect of subjecting the Interest to be paid hereunder to federal income taxes nor will the County fail to take any action which failure could result in subjecting the Interest to be paid hereunder to federal income taxes.

Section 2.2. Representations, Covenants and Warranties of the Trustee. The Trustee represents, covenants and warrants as follows:

(a) The Trustee is a bank duly organized and existing under and by virtue of the laws of South Dakota; is duly qualified, in good standing and authorized to transact business in the State; has power to enter into this Lease; is possessed of full power to own and hold real and personal property, and to sell the same; and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Trustee is now a party or by which the Trustee is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Trustee, or upon the Land and the Facilities except Permitted Encumbrances.

ARTICLE III

CONSTRUCTION COSTS; ACQUISITION AND CONSTRUCTION OF FACILITIES; PAYMENT OF COST; SALE OF FACILITIES

Section 3.1. Construction Costs. The County has caused estimates of the Construction Costs to be prepared. Based on such estimates, the total Construction Costs are estimated to be not less than \$1,784,100 and the total Cost of Issuance, other than the Original Purchaser's discount, is not less than \$15,900. In order to provide the moneys needed to pay the Construction Costs when due, and in consideration of the actions agreed to be performed by the County under this Lease the Trustee has entered into the Trust Agreement, pursuant to which the Original Purchaser will pay to the Trustee the sum of \$1,800,000, and the Trustee agrees that it will apply that money as provided in Section 4.01 of the Trust Agreement.

Section 3.2. Acquisition and Construction of Facilities; Payment of Cost.

(a) The Trustee shall establish the Trust Fund and the proceeds of the issuance and sale of the Certificates shall be deposited into the Trust Fund, all in accordance with the provisions of the Trust Agreement.

(b) The Trustee shall cause the Facilities to be completed with all reasonable dispatch. The Trustee hereby appoints the County as its agent for the purpose of construction of the Facilities and the County may perform the same itself or through its agents, and may make or issue such contracts, orders, receipts and instructions, and in general do or cease to be done all such other things as it may in its sole discretion consider requisite or advisable for the completion of the Facilities and for fulfilling its obligations under this Article. The County shall have full authority and the sole right under this Lease to supervise and control, directly or indirectly, all aspects of the construction of the Facilities, and covenants to the Trustee that it will exercise such authority in a manner which will cause the Facilities to be completed with all reasonable dispatch. The County covenants that it will follow all bid laws as may be required of the County.

The County further agrees that it will indemnify, defend and hold harmless the Trustee, its directors, officers, employees and agents and any assignee of the Trustee, without payment

being made by the Trustee, from and against any and all claims, demands, suits, liabilities and costs (including without limitation, attorneys' fees and costs and expenses of investigation and proof) arising out of the completion of the Facilities, or any contract or matter related thereto.

The moneys on deposit in the Construction Account in the Trust Fund shall be applied by the Trustee as provided in this Section and as otherwise provided in Article IV of the Trust Agreement. Until the moneys on deposit in the Construction Account are so applied, such moneys shall be subject to the lien of the Trust Agreement, and the County shall have no right, title or interest therein except as expressly provided in this Lease and the Trust Agreement.

(c) Disbursements from the Construction Account are to be made to the County or to its order, upon receipt by the Trustee of executed and approved draw requests in substantially the form of Exhibit A to the Trust Agreement; provided that requests for disbursements with respect to Costs of Issuance shall be made in accordance with County Requests submitted pursuant to paragraph (f) of this Section. The County shall be entitled to reimbursement from the Construction Account for Cost of Issuance and Construction Costs incurred and paid on or after May 19, 2012 and for Preliminary Expenditures.

(d) If the moneys in the Construction Account, together with any other moneys made available to pay the Construction Costs, shall not be sufficient to pay the Construction Costs in full, then the County shall pay all that portion of the Construction Costs in excess of the moneys available therefore.

If the County shall make any payments pursuant to this paragraph (d), it shall not be entitled to any reimbursement therefore from the Trustee, the holders of the Certificates, nor shall it be entitled to any diminution in or postponement of the payment of the Lease Payments or the payment of any other amounts payable under this Lease.

(e) The Completion Date shall be the date on which that portion of the Facilities to be financed with the proceeds of the Certificates are completed in their entirety and ready to be placed in service, all as determined by the County. Promptly after the Completion Date, the County shall submit to the Trustee a certificate signed by an officer of the County, which shall specify the Completion Date and shall state that construction of the Facilities has been completed and the Construction Costs have been paid, except for any portion thereof which has been incurred but is not then due and payable, or the liability for the payment of which is being contested or disputed by the County and for the payment of which the Trustee is directed to retain specified amounts of moneys within the Construction Account. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being.

(f) The County shall be entitled to withdraw money from the Construction Account in payment of any item constituting a Cost of Issuance, by furnishing the Trustee a Disbursement Request as provided in Section 4.02 of the Trust Agreement. The County agrees that it will pay promptly all expense constituting a Cost of Issuance, whether or not reimbursed therefore from the Construction Account.

(g) The County shall indemnify and hold harmless the Trustee against any loss, cost or damage (including without limitation attorneys' fees and costs of investigation and proof) suffered by the Trustee as a result of any disbursement made by the Trustee at the request of the County pursuant to a Disbursement Request as provided in Section 4.02 of the Trust Agreement.

Section 3.3. Lease and Option to Purchase Facilities. The Trustee hereby leases with the option to purchase its leasehold interest in the Land and the Facilities to the County, and the County hereby leases for the Lease Term and any Trustee's interest in the Land and Facilities from the Trustee, upon the terms and conditions set forth in this Lease.

The Land and Facilities are leased with the option to purchase in their present condition without representation or warranty of any kind by the Trustee, and subject to the rights of parties in possession, to the existing state of title, to all applicable legal requirements now or hereinafter in effect, and to Permitted Encumbrances. The County has examined the Land and title thereto and has found all of the same to be satisfactory for the purposes of this Lease.

Section 3.4. Lease Payments. The County shall pay to the Trustee, Lease Payments at the times and in the manner specified in the attached Exhibit B. The County does hereby pledge for the Lease Payments the County's ninety cents per thousand general levy pursuant to SDCL Chapter 7-25. The County shall pay the Lease Payments due hereunder to the Trustee at its Principal Office. The County shall designate to which subaccount or subaccounts of the Lease Payment Account the Lease Payments shall be credited by the Trustee. The County is obligated to pay the Lease Payments during the Lease Term.

Section 3.5. Quiet Enjoyment. The Trustee hereby covenants to provide the County during the Lease Term with quiet use and enjoyment of the Land and Facilities, and the County during such term may peaceably and quietly have and hold and enjoy the same, without suit, trouble or hindrance from the Trustee, except as expressly set forth in this Lease. The Trustee will, at the request of the County and at the County's cost, join in any legal action in which the County asserts its rights to such possession and enjoyment to the extent the Trustee may lawfully do so.

Section 3.6. Possession. The Trustee does hereby delivery possession of the Land to the County and the County does hereby accept possession of the Land subject to the terms and conditions of the Lease and Trust Agreement.

Section 3.7. Lessor Access to Land and Facilities. The Lessor shall have the right at all reasonable times to examine and inspect the Land and Facilities, and shall have such rights of access to the Land and Facilities as may be reasonably necessary to cause the proper maintenance thereof in the event of failure by the County to perform its obligations hereunder.

Section 3.8. Compliance with Trust Agreement. During the Term of this Lease, the County agrees to perform all obligations imposed upon it by the Trust Agreement.

Section 3.9. County's Title to Land. The County represents and warrants that it has good and marketable fee simple title to the Land, subject only to Permitted Encumbrances, and covenants that it will not, during the Lease Term, encumber the Land, or permit the Land to be encumbered, in such a manner as would jeopardize the Trustee's leasehold interest

therein. The County recognizes that total or partial failure of title to, or the creation or existence of any encumbrance upon, the Land or the Facilities shall not, under any circumstances, excuse the County from the payment of the Lease Payments, or result in any right to abatement or set-off with respect thereto.

ARTICLE IV

LEASE TERM; TERMINATION OF LEASE TERM; TRANSFER OR SURRENDER OF LAND AND FACILITIES

Section 4.1. Lease Term. This Lease shall be in effect for the Lease Term, unless terminated prior to said date as provided in Section 4.2.

Section 4.2. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) The prepayment by the County of all Lease Payments required to be paid by it hereunder, pursuant to Section 8.1; or
- (b) The discharge by the County of its obligation to pay the Lease Payments required to be paid by it hereunder pursuant to Section 8.3.

Section 4.3. Trustee's Interest in the Land and Facilities. Upon payment of all Lease Payments due as listed on Exhibit B, or upon prepayment of the Lease Payments or discharge of the County's obligation to make the Lease Payments in accordance with Article VIII hereof, full and unencumbered legal title to the Facilities shall pass to the County, and the Trustee shall have no further interest therein. In such event the Trustee and its officers shall take all actions necessary to authorize, execute and deliver to the County any and all documents necessary to vest in the County, all of the Trustee's right, title and interest in and to the Land and Facilities, free and clear of all liens, leasehold interests, encumbrances (other than Permitted Encumbrances), including, if necessary, a release of any and all interests or liens created under the provisions of this Lease.

Section 4.4. No Subordination of County's Title to Trustee. No provision of this Lease shall be construed as in any way subordinating, conveying or agreeing to convey, or otherwise adversely affecting the County's fee simple interest in the Land. This Lease covers only the Trustee's leasehold interest in the Land created by the Ground Lease, and all references to the Land herein and in the Trust Agreement shall be construed as applying only to such leasehold interest, unless otherwise specifically stated.

Section 4.5. Purchase of Title. At any time when (a) the entire Principal Balance, together with any unpaid or delinquent interest, has been fully paid, whether by (i) payment of all Lease Payments as provided in Section 3.4 hereof, (ii) prepayment of all of the Lease Payments as provided in Section 8.1 hereof, or (iii) discharge of all of the Lease Payments, as provided in Section 8.3 hereof then the purchase of the Land and the Facilities by the County shall be deemed to have been completed. The Trustee shall thereupon deliver to the County such instruments of conveyance or release as, in the opinion of counsel, may be necessary to release any interests of the Trustee and the Trustee in the Land and Facilities.

ARTICLE V

GENERAL MATTERS

Section.5.1. Use; Permits. The County shall exercise due care in the use, operation and maintenance of the Land and Facilities, and shall not use, operate or maintain the Land and Facilities improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. The County shall obtain or cause to be obtained all permits and licenses necessary for the operation, possession and use of the Land and Facilities. The County shall comply with all State and Federal Laws applicable to the operation, possession and use of the Land and Facilities, and if compliance with any such State and Federal Law requires changes or additions to be made to the Land and Facilities, such changes or additions shall be made by the County at its expense.

Section 5.2. Maintenance and Modification of Facilities By the County. During the Term of this Lease the County shall, at its own expense, maintain, preserve and keep the Land and Facilities in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Land and Facilities in such condition. The Trustee shall have no responsibility for any of these repairs, replacements or improvements. In addition, the County shall, at its own expense, have the right to remodel the Facilities or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Facilities and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Facilities; and the Facilities, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value not less than the value of the Facilities immediately prior to the making of such additions, modifications and Facilities. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by the County in such manner and on such terms as are determined by the County. The County will not permit any mechanic's or other lien to be established or remain against the Land and Facilities for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the County pursuant to this Section; provided that if any such lien is established the County shall first notify the Trustee of the County's intention to do so, the County may in good faith contest any lien filed or established against the Land and Facilities, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Trustee shall notify the County that, in the opinion of counsel, by non-payment of any such item the interest of the Trustee in the Land and Facilities will be materially endangered or the Land and Facilities or any part thereof will be subject to loss or forfeiture, in which event the County shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Trustee with full security against any such loss or forfeiture, in form satisfactory to the Trustee. The Trustee will cooperate fully with the County in any such contest, upon the request and at the expense of the County.

Section 5.3. Taxes, Other Governmental Charges and Utility Charges. During the Term of this Lease the County shall also pay or cause to be paid when due all gas, water, steam, electricity, heat, power and other charges incurred in the operation, maintenance,

use, occupancy and upkeep of the Land and Facilities. The County shall also pay all property and excise taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Land and Facilities or any part thereof or the Lease Payments, and which become due during the Term of this Lease with respect thereto; and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Land and Facilities; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. The County shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Trustee, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon property.

The County may, at the County's expense and in the County's name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Trustee shall notify the County that, in the opinion of counsel, by nonpayment of any such items the interest of the Trustee in the Land and Facilities will be materially endangered or the Land and Facilities or any part thereof will be subject to loss or forfeiture, in which event the County shall promptly pay such taxes, assessments or charges or provide the Trustee with full security against any loss which may result from nonpayment, in form satisfactory to the Trustee.

Section 5.4. Liens. The County shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Land and Facilities, except the respective rights of the Trustee and the County as herein provided and Permitted Encumbrances. Except as expressly provided in this Article, the County shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Trustee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.5. Easements. The Trustee will from time to time, at the request of the County and at the County's cost and expense, cooperate and join with the County: (a) in granting easements and other rights in the nature of easements, releasing existing easements or other rights in nature of easements which are for the benefit of the Land and Facilities; (b) in executing amendments to any covenants and restrictions affecting the Land and Facilities; (c) executing and delivering to any person any instrument appropriate (i) to confirm or to the effect that such grant, release or execution is not detrimental to the proper conduct of the operations of the County on or in the Land and Facilities, (ii) to show the consideration, if any, being paid for such grant, release or amendment, (iii) to show that such grant, release, dedication, transfer, petition or amendment does not materially impair the use of the Land and Facilities or reduce their value, or (iv) to confirm that the County will remain obligated hereunder to the same extent as if such grant, release, or amendment had not been made, and the County will perform all obligations of the Trustee under such instrument.

The consideration, if any, received for such grant, release, or amendment shall be paid to the Trustee and applied against the next succeeding Lease Payment.

Section 5.6. Arbitrage Rebate. The County acknowledges that the rebate provisions of Section 148(f) of the Code are applicable to the Lease Payments and to the Certificates, and the County will comply with all provisions of the Tax Exemption Certificate and Agreement, dated as of the date of delivery of the Certificates, and executed by the County. The County shall pay all costs and expenses incurred in complying with all provisions of the Tax Exemption Certificate and Agreement, including the amount of rebatable arbitrage (or penalty in lieu thereof) required at any time to be paid by the County to the United States. The County will indemnify and hold the Trustee harmless from any liability or alleged liability resulting from such computations or failure to compute any rebate or penalty amount.

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 6.1. Damage, Destruction and Condemnation. If the Facilities or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or title to or the temporary use of the Facilities or any part thereof, or the interest of the County or the Trustee in the Land or Facilities or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the County shall have the rights with respect to the Net Proceeds of any insurance or condemnation award specified in this Section, but the County shall be obligated to continue to pay the Lease Payments due with respect to the Facilities. All Net Proceeds shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Land and the Facilities by the County or if the County elects not to repair or rebuild, all Net Proceeds shall be applied to prepay Lease Payments; in either event all Net Proceeds not needed for the purpose shall belong to the County.

Section 6.2. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Land and the Facilities, the County shall either: (a) complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this Section 6.2, the County shall not be entitled to any reimbursement therefore from the Lessor nor shall the County be entitled to any diminution of the Lease Payments due with respect to the Facilities; or (b) prepay the Lease Payments, in which event the Net Proceeds shall be used for this purpose. If the County elects not to repair, rebuild or restore, the County shall prepay or discharge the Lease Payments to the full extent of the Net Proceeds.

Section 6.3. Cooperation of Trustee. The Trustee shall cooperate fully with the County at the expense of the County in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 6.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Land or the Facilities or any part thereof and will, to the extent it may lawfully do so, permit the County to litigate in any proceeding resulting there from in the name of and on behalf of the

Trustee. In no event will the Trustee voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Land or the Facilities or any part thereof without the written consent of the County.

Section 6.4. Condemnation Of Other Property Owned by the County. The County shall be entitled to the Net Proceeds of any condemnation award or portion thereof made for destruction of, damage to or taking of its property not included in the Land or the Facilities.

ARTICLE VII

INSURANCE AND INDEMNIFICATION

Section 7.1. Liability Insurance During the Term of this Lease. The County shall procure and maintain continuously in effect with respect to the Land and Facilities, insurance (which shall name the Trustee as an additional insured) against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Land and Facilities or any part thereof, in the amount of \$1,000,000 for death of or personal injury to any one person, in the amount of \$1,000,000 for all personal injuries and deaths arising out of any one occurrence, and in the amount of \$100,000 for property damage arising out of any one occurrence. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds may be paid. If any insurance required by this Section is unavailable or the cost of obtaining such insurance is, in the judgment of the County Commission, excessive, the County may self-insure for such risks, provided that the County gives prompt written notice of its intent to do so to the Trustee, and provided that the County shall continue to seek such insurance coverage and, if such insurance becomes available at a reasonable cost, the County shall promptly obtain such insurance. Notwithstanding the foregoing, if the County elects to self-insure, other than through a self-insurance pool, the County shall at all times maintain a policy of general public liability insurance with respect to the Land and Facilities naming the Trustee as insured, in an amount not less than \$1,000,000.

Section 7.2. Property Insurance During the Term of this Lease. The County shall procure and maintain continuously in effect during the Term of this Lease with respect to the Facilities, to the extent of the full insurable value of the Facilities, other than building foundations, insurance against loss from or damage by vandalism and fire, with a uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. All policies (or endorsements or riders) evidencing insurance required in this Section shall be carried in the names of the County and the Trustee as their respective interests may appear. Each policy (or endorsement or rider) may be written with a deductible amount which is customary for Facilities comparable to the Facilities. The Net Proceeds of Insurance required by this Section shall be applied as provided in Article VI.

Section 7.3. Administration of Claims, Etc. Neither the County nor the Trustee shall be required to prosecute any claim against or contest any settlement proposed by any insurer,

but any of them may prosecute any such claim or contest any such settlement. In the event of a contest by the County, it shall be at the County's expense, and the County may bring such claim or contest in the name of the Trustee, the County or both, and the Trustee will join therein at the County's written request upon the receipt by the Trustee of an indemnity from the County against all costs, liabilities and expenses in connection with such claim or contest.

Section 7.4. Other Insurance and Requirements of Insurance. All insurance required by this Article may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or a self-insurance pool permitted by State law; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to both parties at least thirty (30) days before the cancellation or revision becomes effective; and shall name the County and the Trustee as insured parties. The County shall deposit with the Trustee policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Before the expiration of any such policy, the County shall furnish to the other party evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event the County shall notify the Trustee of this fact.

Section 7.5. Indemnification. (a) As between the Trustee and the County, the County assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Facilities and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the County, the Trustee or of third parties, and whether such property damage be to the County or the Trustee's property or the property of others, which is proximately caused by the negligent conduct of the County, its officers, employees, agents and lessees, or arising out of the operation, maintenance or use of the Land and Facilities by the County, its officers, employees, agents and lessees. The County hereby assumes responsibility for and agrees to indemnify, defend and hold harmless the Trustee, its directors, officers, employees and agents, and any assignee of the Trustee, without payment being made by the Trustee, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Trustee or its directors, officers, employees, agents or assignees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part on the foregoing, to the maximum extent permitted by law.

(b) The County further agrees that it will indemnify, defend and hold harmless the Trustee, its directors, officers, employees and agents and any assignee of Trustee, without payment being made by Trustee, from and against any and all claims, demands, suits, liabilities and costs (including without limitation attorneys' fees and costs and expenses of investigation and proof) arising out of any violation or asserted violation of any law or regulation, including without limitation, any environmental law or regulation, or arising out of the presence on the Land of any hazardous or toxic waste, materials or substances within the meaning of any federal, state or local law or regulation.

ARTICLE VIII

OPTION TO PREPAY; DISCHARGE

Section 8.1. Option to Prepay in Whole or in Part The Lease. The County shall have the option to prepay the unpaid Lease Payments but only in the manner provided in Exhibit B.

Section 8.2. Exercise of Prepayment Purchase Option. The County shall give notice to the Trustee of its intention to exercise its prepayment purchase option not less than 30 days in advance of the date of exercise, and shall pay to the Trustee on the date of exercise an amount equal to the amount of Principal to be prepaid, plus accrued interest to the prepayment date, as shown in Exhibit B, less any Net Proceeds to be applied to the amount to be so paid in accordance with Section 6.2.

Section 8.3. Discharge of County's Obligation. The County may at any time discharge its obligation to pay the Lease Payments due under this Lease by depositing irrevocably in escrow with a bank or trust company, cash or securities of the type permitted for defeasance of the Certificates under Article VIII of the Trust Agreement interest payable at such times and at such rates and maturing or redeemable at the option of the holder on such dates as shall be required to provide moneys sufficient to pay or prepay all unpaid Lease Payments on the dates when they are due or subject to prepayment as provided in Section 8.1, as determined by the County, together with computations and an opinion letter of a certified public accounting firm or a financial consulting firm recognized by the rating agencies as adequate for the purpose showing and attesting to the sufficiency of such moneys and securities for this purpose and an opinion letter of Independent Counsel stating that the deposit of such cash or securities will not cause the Lease or the Certificates to become "arbitrage bonds" under Section 148(a) of the Code. The requirements for defeasance set forth in Article VIII of the Trust Agreement shall also apply to any defeasance hereunder.

Section 8.4. Conditions to Prepayment. The County may exercise the rights specified in this Article only if it is not in default under this Lease.

ARTICLE IX

ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING

Section 9.1. Assignment and Subleasing by the County. The rights and obligations of the County under this Lease may not be assigned by the County without the written consent of the Trustee, which shall not be unreasonably withheld; provided that the County may sublease the Land and Facilities, in whole or in part, without the consent of the Trustee, subject, however, to each of the following conditions:

- (i) This Lease and the obligation of the County to make Lease Payments and other payments hereunder, shall remain obligations of the County.
- (ii) The sublease shall require the sublessee to meet the obligations of the County hereunder to the extent of the interest subleased.
- (iii) The County shall, within ten (10) days after the execution thereof and before the effective date, furnish or cause to be furnished to the Trustee, a true and complete copy of such sublease.
- (iv) No sublease by the County shall cause 5% or more, in aggregate area or rental value, of the Land and Facilities to be used by any entity other than an agency of the State or the County, or a political subdivision of the State, or for a purpose other than a function authorized under the provisions of the Constitution and laws of the State unless the County provides the Trustee with an opinion of Bond Counsel stating that the proposed sublease will not cause the Interest payable on this Lease and the Certificates to become subject to federal income taxation.
- (v) No sublease shall cause the interest payable on this Lease and the Certificates to become subject to federal income taxes as evidenced by an opinion of Bond Counsel delivered to the Trustee and the County.

Section 9.2. Restriction on Mortgage or Sale of Project by the Court. Except as provided in Section 9.1, the County will not mortgage, sell, assign, transfer or convey the Land or the Facilities or any portion thereof during the Term of this Lease.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. Any one or more of the following events shall be "Events of Default" under this Lease:

- (a) Failure by the County to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of forty (45) days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action

is instituted by the County within the applicable period and diligently pursued until the default is corrected.

(c) The occurrence of an Act of Bankruptcy.

Section 10.2. Remedies on Default. Whenever any Event of Default by the County shall have happened and be continuing, the Trustee as assignee under the Trust Agreement shall have the right, at its option, to take, but only upon not less than five days written notice to the County, one or any combination of the following remedial steps:

(a) without terminating this Lease, and subject to the rights of any entity subleasing all or any portion of the Land and the Facilities which is not in default under a sublease complying with Section 9.2, re-enter and take possession of the Land and Facilities and exclude the County and any sublessee in default from using it until the default is cured; or

(b) subject to the provisions of Section 3.6, take whatever action at law or in equity may appear necessary or desirable to: (i) collect the Lease Payments then due, (ii) collect any Lease Payments as they become due and payable, or (iii) enforce performance and observance of any obligation, agreement or covenant of the County under this Lease or the Resolution.

This provision does not limit any other remedies which the Trustee may have under the Trust Agreement or any other documents.

Section 10.3. Delay Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party to exercise any remedy reserved to it in this Lease it shall not be necessary to give any notice, other than such notice as may be required in this Lease.

Section 10.4. No Remedy Exclusive.

No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.5. No Additional Waiver Implied by One Waiver.

In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI
ADMINISTRATIVE PROVISIONS

Section 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified or registered form with postage fully prepaid:

If to the County:

Brookings County
314 6th Avenue
Brookings, SD 57006
Attn: County Finance Officer

If to the Original Purchaser:

First Bank & Trust
520 6th Street
PO Box 5057
Brookings, SD 57006-5057

If to the Trustee:

First Bank & Trust
520 6th Street
PO Box 5057
Brookings, SD 57006-5057

If to the Registrar:

First Bank & Trust
520 6th Street
PO Box 5057
Brookings, SD 57006-5057

The above named persons, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Trustee and the County, their respective successors and assigns.

Section 11.3. Severability. In the event any provision, of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.4. Amendments Changes and Modifications. This Lease may be amended or any of its terms modified only by written amendment authorized and executed by the

County and the Trustee; provided that no such amendment shall be effective without the consent of the Trustee or any other person or entity to whom the rights of the Lessor to receive Lease Payments due hereunder has been assigned.

Section 11.5. Further Assurances and Corrective Instruments. The Trustee and the County agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Land and Facilities or for carrying out the expressed intention of this Lease.

Section 11.6. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of South Dakota.

Section 11.8. Authorized Officers. Whenever under the provisions of this Lease the approval of the Trustee or the County is required, or the Trustee or the County is required to take some action at the request of the other, such approval of such request shall be given for the Trustee or for the County by an Authorized Officer, and any party hereto shall be authorized to rely upon any such approval or request.

Section 11.9. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Lease.

Section 11.10. Financial Statements. The County shall provide the Trustee and the Original Purchasers as soon as they are available, the audited financial statements of the County, together with such additional information as the Trustee and the Original Purchasers may from time to time reasonably request

IN WITNESS WHEREOF, the Trustee has caused this Lease to be executed in its corporate name by its duly authorized officer; and the County has caused this Lease to be executed in its name by its duly authorized officers and sealed with its corporate seal, as of the date first above written.

BROOKINGS COUNTY, SOUTH DAKOTA

By: _____

Its: Chairman

(SEAL)

ATTEST:

Finance Officer

COUNTERSIGNED

Resident Attorney

STATE OF SOUTH DAKOTA }

:SS

COUNTY OF BROOKINGS }

On this 1st day of November 2020, before me, a notary public personally appeared _____ and Vicki Buseth, to me personally known to be the Chairman and Finance Officer of Brookings County, a municipality of the State of South Dakota, the County Officials referred to in the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said political subdivision; that said instrument was signed and sealed in behalf of the County having been authorized by the governing board of the County; and said Chairman and Finance Officer acknowledged said instrument to be the free act and deed of said County.

Notary Public-South Dakota
My Commission Expires:

FIRST BANK & TRUST

By: _____
Its: Vice President

STATE OF SOUTH DAKOTA }
:SS
COUNTY OF BROOKINGS }

On this 1st day of November 2020, before me, a Notary Public, personally appeared Steve Hogie, to me personally known, who, being duly sworn, did say that he is Vice President of First Bank & Trust the association referred to in the foregoing instrument; that said instrument was signed and sealed in behalf of said association by authority of its Board of Directors; and he acknowledged said instrument to be the free act and deed of said association.

Notary Public-South Dakota
My Commission Expires:

EXHIBIT A
Legal Description

Block 9 of the Second Addition to the City of Brookings, Brookings County, South Dakota according to the recorded plat thereof.

EXHIBIT B

Prepayment

The Lease may be prepaid on or after June 1, 2022, in whole or in part, by paying the Principal Component remaining unpaid, plus the Interest Component to date of payment.